

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TYRIQUE JACKSON, :
 Petitioner

v. : CIVIL ACTION

MARK CAPOZZA, No. 17-cv -5126
SUPERINTENDENT, *et al*, :
 Respondents

ORDER

AND NOW, this day of , 2020, upon careful and independent consideration of the petition for a writ of habeas corpus filed pursuant to 28 U.S.C. §2254, and after review of the Report and Recommendation of United States Chief Magistrate Judge Linda K. Caracappa, IT IS ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED.
2. The petition for habeas corpus is GRANTED as to the ineffective assistance of trial counsel claim for failing to object to the reasonable doubt jury instruction. The Commonwealth shall retry Petitioner or release him from all custody within 180 days of this Order.
3. Claims Two and Three are DEFERRED, as the writ is being granted on other grounds.

BY THE COURT:

Hon. Petrese B. Tucker, U.S.D.J.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TYRIQUE JACKSON,	:	
Petitioner	:	
v.	:	CIVIL ACTION
MARK CAPOZZA,	:	No. 17-cv -5126
SUPERINTENDENT,	:	
SCI FAYETTE, <i>et al.</i> ,	:	
Respondents	:	

**PETITIONER’S MOTION FOR COURT TO ISSUE RULING
GRANTING THE WRIT OF HABEAS CORPUS**

TO THE HONORABLE PETRESE B. TUCKER, JUDGE OF THE SAID COURT:

Petitioner, Tyrique Jackson, by his attorney, Daniel Silverman, respectfully requests that the Court issue a ruling (1) adopting the February 8, 2019 Report and Recommendation of United States Chief Magistrate Judge Linda K. Caracappa that habeas relief be granted and (2) conditionally granting the writ in light of the fact that the Commonwealth filed no Objections to that Report. In support thereof, Jackson alleges the following:

1. On February 28, 2019, United States Chief Magistrate Judge Linda K. Caracappa issued a Report and Recommendation (doc. 19) recommending that the writ of habeas corpus be granted on the grounds that trial counsel was ineffective for

failing to object to a reasonable doubt instruction that unconstitutionally elevated that level of doubt required for acquittal. This was Claim V in the petition. The Report deferred action on the remaining claims.

2. The Commonwealth elected not to file Objections. This decision followed its concession in this and other cases raising the same legal issue that the instruction in question is in fact unconstitutional.

3. It has been 15 months since the issuance of that Report. In light of the Commonwealth's failure to preserve its rights by filing Objections, Jackson has the right to habeas relief.

WHEREFORE, petitioner, Tyrique Jackson, by his attorney, Daniel Silverman, respectfully requests that the Court issue a ruling adopting the Report and Recommendation and conditionally granting the writ. A proposed Order is attached.

Respectfully submitted,

SILVERMAN & ASSOCIATES, P.C.

BY: /s/ Daniel Silverman
Daniel Silverman

CERTIFICATE OF SERVICE

I, Daniel Silverman, certify that on the 29th day of May, 2020 I served via the Court's ECF System the below-listed individual(s) with a true and correct copy of the attached Motion for Relief:

Max Kaufman, Esquire
Supervisor, Federal Litigation Unit
District Attorney's Office
3 South Penn Square
Philadelphia, PA 19107

SILVERMAN & ASSOCIATES, P.C.

BY: /s/ Daniel Silverman
Daniel Silverman

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